The Hon'ble Mr.Justice V.M.Jain, Judge.

Whether approved for reporting?[1]

For the Appellants: Ms. Bhavana Dutta, Advocate.

For the Respondent: Mr.Sharawan Dogra, Advocate.

V. M. Jain, J.(Oral)

This Regular Second Appeal has been filed by the plaintiffs-appellants against the judgments and decrees of the Courts below, whereby the suit filed by the plaintiffs was dismissed by the trial court and the appeal filed by them was also dismissed by the learned District Judge, Shimla.

The facts which are relevant for the decision of the present appeal are that the plaintiffs had filed a suit for permanent prohibitory injunction against the defendant Municipal Corporation, with the allegations that the plaintiffs were the owners in possession of the suit land and that in order to put the suit land in more profitable use the plaintiffs in the year 1977 had raised a tin roof over the suit land by putting iron girders. It was alleged that in the year 2002 the plaintiffs received a complaint against

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[1] Whether reporter of local papers are allowed to see the judgment ?

every right to put their land to more profitable use and the defendant Corporation had no right to threaten the plaintiffs or restrain the plaintiffs from peaceful enjoyment of the suit land. It was accordingly prayed that a decree for permanent prohibitory injunction be passed restraining the Municipal Corporation from causing any type of interference in the peaceful enjoyment of the land of the plaintiffs and from removing the goods of the plaintiffs, which were lying on the suit land.

In the written statement, the defendant Corporation took up various preliminary objections. On merits, it was alleged that the plaintiffs had unauthorisedly raised the tin shed over the suit land without the approval of the Municipal Corporation and the tin shed was liable to be demolished in accordance with the provisions of Section 352 of the Himachal Pradesh Municipal Corporation Act, 1994. It was further alleged that the defendant Corporation was not party to demarcation proceedings, showing the plaintiffs to be the owners in possession of the suit land. It was further alleged that since the tin shed had been constructed without prior permission from the proper authority the same is liable to be demolished by taking appropriate legal action against the plaintiffs under the Municipal Corporation Act.

The records were requisitioned.

After hearing the learned counsel for the parties and perusing the record, in my opinion, there is no merit in this appeal and the same is liable to be dismissed. The contention of the learned counsel for the plaintiffs-appellants that the tin shed in question was constructed by Desh Raj, father of the plaintiffs, in the year 1977, was negatived by both the Courts below, holding that the plaintiffs had failed to prove that the tin shed in question was constructed in the year 1977. This is especially so when the case of the defendant Corporation is that the said tin shed was constructed in the year 2003. The trial Court record has been perused by me. In order to prove that the tin shed in question was constructed by the plaintiffs or their father in the year 1977, the only evidence led by the plaintiffs was the statement of PW-1 Kamal Kumar Sood, one of the plaintiffs. He only deposed that the tin shed was constructed by their father but could not say as to when it was constructed though he stated that it was quite old. In cross-examination, he stated that he did not know whether any permission was taken from the Municipal Corporation before constructing the tin shed. On the other hand, the defendant Corporation examined DW-1 Bhavesh Chaturvedi, J.E. of the Municipal Corporation,

building plans sanctioned or approved from the concerned Municipal Corporation or Municipal Council at any point of time. In the absence of any material on the record to show that it was an old construction, in my opinion, the plaintiffs appellants could not be allowed to restrain the defendant Corporation from initiating legal proceedings against the plaintiffs for the demolition of the said tin shed, which was constructed without any authority of law.

In view of the detailed discussion above, in my opinion, no fault could be found with the findings of the courts below while dismissing the suit of the plaintiffs and no case for interfering in the present regular second appeal is made out, especially when no question of law much less a substantial question of law arises for determination in this appeal. Accordingly, finding no merit in this appeal, the same is hereby dismissed.

CMP Nos.1126 &1127 of 2005

In view of dismissal of the main appeal, both these applications have become infructuous and are disposed of accordingly.

December 29,2005(g) **(V.M.Jain),J.**